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Legal Review Regarding the Cancellation of Authentic Deed Made By Public Official Due to Unlawful Action (Case Study of Court Decision Number: 57/Pdt.G/2012/PN.Pdg)

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Abstract

Making a testament is bound by the form and method determined by the laws and regulations. When it is ignored, it may result cancellation to the testament. Similarly, grants in any law are basically irrevocable; however, if it does not meet certain conditions, the grant can be canceled. One example is a lawsuit for the cancellation of a will and a deed made before a Notary/ Conveyancer in Padang City. Even though the deed is physically and formally in accordance with the provisions determined by the Law, however, there is an error materially from the contents of the deed due to an unlawful action. Regarding to this, the authors formulated the research problems as follows: 1. What is the legal basis of the plaintiff's claim to the Padang District Court?, 2. What is the basis for consideration of the Padang District Court judge in deciding the case Number: 57/PDT.G/2012/PN.Pdg?, and 3. How is the implementation of decision Number: 57/PDT.G/2012/PN.Pdg concerning the cancellation of the transfer of the object of dispute at the Padang City National Land Agency? This study applies a normative juridical method. The results of the study include: 1) There is a clause in the grant deed in Article 6, if both parties—in this case with all the consequences—choose a common legal residence at the clerk office of the Padang District Court and do not change that choice. 2) The inherited and granted property violates Article 913 of the Civil Code on the absolute right of the heir (*legitieme portie*). 3) In the implementation of decision Number: 57/PDT.G/2012/PN.Pdg, the cancellation of the transfer of the object of the dispute has not yet been processed by the competent authority.

Keywords: Implementation of Decisions; Cancellation of Deeds; Unlawful Actions

Introduction

Indonesia is a legal state (*rechstaat*) and is not a state based on power (*machtstaat*) as contained in the 1945 Constitution which clearly stipulates that the State of the Republic of Indonesia is a legal state. According to Stahl, the elements of the rule of law (*rechstaat*) are the protection of human rights and the separation or division of power to guarantee those rights.¹ Human rights are a set of rights attached to the nature and existence of human beings as creatures of God Almighty. It is a gift from Him

¹Ridwan Hr, 2002, *State Administrative Law*, PT Raja Grafindo Persada, Jakarta, page 3

that must be respected, upheld and protected by the state, law and government, and every person for the honor and protection of human dignity.

Currently, the implementation of human rights often results in violations which consequently will lead to conflicts or disputes that can disrupt the balance of people's lives. To resolve a conflict or dispute that exists in people's lives, the state forms a judicature institution which is the process of implementing and enforcing the law for justice.

Law enforcement and justice are carried out by carrying out other tasks related to the law that is determined by the Law to each judicature body such as general judicature, judicature religion, judicature military, and judicature of state administration. Judicature is anything related to the task of deciding a case by applying and finding an *in concreto* law in maintaining and guaranteeing the adherence to the material law by using procedural stipulated by formal law.²

A court is an official institution or agency that implements a judicature system that checks, hears, and decides cases.³ The form of the judicature system carried out in court is an official public forum and is carried out based on the applicable law in Indonesia. The process of proceedings in the court certainly cannot be separated from the role and duties of the judge as a law enforcement official who has the authority to examine and hear a dispute.

According to Bambang Waluyo SH, the judge is a court organ that is considered to understand the law which he has laid down the obligation and responsibility so that the law and justice are enforced in written or unwritten forms (adjudicating a case filed under the pretext that the law is not clear or unclear), and there must not be anything that is contrary to judicature principles and joints based on God.⁴

The judge is the main pillar and the last place for justice seekers in the judicature process. Therefore, as one element of judicial power that receives, checks and decides cases, judges are required to provide justice to justice seekers.⁵ One form of protection and legal certainty guaranteed by the state through the role of judges to the public is the validity of the deed made by the Public Official; i.e. Notary and Conveyancer.

According to Article 1 No. 1 of Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position, stating that "Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other Laws".

Meanwhile, the Conveyancer definition is stated in Article 1 paragraph (1) of Government Regulation No. 24 of 2016 concerning Amendment to Government Regulation No. 37 of 1998 concerning Position Regulations of Conveyancer (hereinafter referred to as Changes in Conveyancer Position Regulations); i.e. public officials who are given the authority to make authentic deeds regarding certain legal actions regarding land rights or Property Rights to the Flats.

According to Sudikno Mertokusumo, a deed is a letter that is given a signature, which contains events, which form the basis of a right or engagement, which was made from the beginning deliberately to prove.⁶ For the definition of authentic deed, Article 1868 of the Civil Code states that an authentic deed is a deed made in the form determined by the Law, made by or in the presence of public officials in power and in place where he/ she made the deed.

Some of the making of authentic deeds are required by legislation in order to create certainty, order and legal protection and some are also desired by interested parties to ensure the rights and obligations of the parties for certainty, order and legal protection for interested parties as well as the

² Sjachran Basah, 1995, *Judicatures in Indonesia*, PT Raja Grafindo Persada, Jakarta, page 9

³ News, Differences between Courts and Judicatures, accessed from: <https://fakum.untad.ac.id/perbedaan-judicature-dan-pengadilan/>, on Tuesday, March 20, 2018, at 15.00 West Indonesia Time

⁴ Papers, Definition of Judge, accessed from: <http://rakcards.com/pengertian-hakim-tugas-fungsi-kedudukan-hakim.html>, on Tuesday, March 20, 2018, at 15.30 West Indonesia Time

⁵ Mustofa, Wildhan Suyuti, 2013, *Code of Ethics of Judges*, Kencana, Jakarta, page 55

⁶ Daeng Naja, 2012, *Deed Making Techniques*, Pustaka Yustisia, Yogyakarta, page 1

community as a whole.⁷ Notaries and Conveyancers, as parties who come in direct contact with the interests of the community, must be truly able to provide their proper services to the community so that no community is harmed. To avoid things that can harm the community, in each of their duties, the Notary and Conveyancer must submit and be bound by the existing rules.

Every Notary and Conveyancer is also required to have extensive knowledge and responsibility for what is witnessed; i.e. that which is seen, heard and also carried out by Notaries and Conveyancers themselves as public officials in carrying out their positions..⁸ Similarly, the process of making authentic deeds is not only based on formal legal provisions, but it is also seen materially where the events of the formation or making of the deed must be done legally on the agreement and/ or willingness of the parties listed in the deed.

It is very important to know it because many public officials in authority only make deeds in formal legal procedures. In fact, the process of making the deed materially contains elements against the law. That is like what happened in a case experienced by one of the Notaries and Conveyancers in Padang City based on the decision of the Padang District Court Number: 57/Pdt.G/2012/PN.Pdg. In that case, the Notary and Conveyancer who had the initials ST became defendant related to the deed made before him.

This case originated from 7 (seven) siblings, among others named Jasrin, Nely, Edlin, Jejeng, Reni, Gusrinaldi, and Joni, hereinafter referred to as the Plaintiffs, postulating the existence of illegal acts (*Onrechtmatige daad*) carried out by Jalisah (Defendant I), Rina (Defendant II), Novelina (Defendant III), Notary and Conveyancer ST (Defendant IV), Head of the Padang City Land Office (Defendant V), Hailinasrita (Co-Defendant). In this case, the Plaintiff and Defendant II, Defendant III, and Co-Defendant are the biological children of Defendant I.

The plaintiff filed a lawsuit against the defendant because of an illegal act (*Onrechtmatige daad*) carried out by Defendant I, Defendant II, Defendant III and Defendant IV; i.e. without permission and unbeknownst to the Plaintiffs have made, signed and published:

1. Testament Deed No. 5 Dated August 25, 2011 made and signed by Defendant I, Defendant II, and Defendant III before Defendant IV as Notary/ Conveyancer of Padang City, which contained a plot of land and a building on the Certificate of Property No. 925, Gunung Sarik Village written on behalf of Defendant I to Defendant II.
2. Grant Deed No. 18/2011 dated September 19, 2011 made and signed by Defendant I, Defendant II, and Defendant III before Defendant IV as the Notary/ Conveyancer of Padang City on a plot of land and buildings on the Certificate of Property No. 925, Gunung Sarik Village written on behalf of Defendant I, and then the Certificate has also been changed to Certificate of Property No. 3144 Gunung Sarik Village is now written in the name of Defendant II.

That the object of the contents of the testament and the grant deed is the result of the assets during the marriage of the biological parents of the Plaintiff, Defendant II, Defendant III, and Defendant, namely between Bagindo Nasrin (the late) and Djalisah (Defendant I). Therefore, the Plaintiff is the right of the Plaintiff to be included in the process of making these deeds because it concerns the Plaintiff's inheritance.

In addition, during the making and signing the Testament Deed and the Grant Deed, the condition of the Defendant I when was in a state of illness due to experiencing and suffering from a stroke. Based on this, the plaintiff filed a cancellation of the Testament Deed and Grant Deed made by the defendant to

⁷ Explanation of the Law of the Republic of Indonesia No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position.

⁸ Hendra Rahmad, 2010, *Notary Liability against Authentic Deeds Whose Appearers Use False Identities*, Journal of Law, Volume 3, Number 1, page 1

the Padang District Court judge to state that the two deeds were invalid and not legally enforceable because they harmed the plaintiff as heirs and were not in accordance with laws existing legislation.

Research Method

This study uses an empirical juridical approach as a problem approach method; i.e. a problem is reviewed on legal material or regulations that are associated with the library research material to obtain secondary data and field research to obtain primary data.⁹ This research is descriptive in which research carried out with the intention of describing precisely the characteristics of an individual, circumstances, symptoms, or to determine whether or not there is a relationship between a symptom and other symptoms in a society.¹⁰ Descriptive research is intended to provide data as thoroughly as possible to obtain concrete data as material in this study.

The type of research the author uses in this legal research is normative legal research or library legal research; i.e. legal research conducted by examining library materials or secondary research sources consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The materials are arranged systematically, studied, then drawn a conclusion in relation to the problem under study.

The data collection technique of this research is interview technique; that is a method used by researchers to obtain information verbally from respondents, by conducting direct/ face-to-face interview between the interviewer and the respondent, with the aim of obtaining and/ or answering the problems to be examined in this study. In this case, the author will conduct interviews including the Judge of the Padang District Court, Notary/ Conveyancer in Padang City, and the Head of the Disputed Field Section of the Padang National Land Agency. Interviews are used with semi-structured interview patterns. It means that it is possible to develop new questions from the existing structured question depending on the answers given by the respondent.

The step of data processing carried out includes the editing process by tidying and checking the data that has been collected on the research that the author did so that the truth can be accounted for.¹¹ After primary data and secondary data are obtained, then, data analysis is carried out by revealing the facts in the form of sentences, on the data obtained from the results of these studies. The author uses qualitative analysis methods; i.e. analysis based on existing regulations and library materials and elaboration with sentences so that they can give a detailed picture.¹²

Research Results and Discussion

1. Legal Basis of the Plaintiff Filing a Claim in the Padang District Court

For every legal entity or individual who has an interest and feels his/ her rights are harmed, he/ she has the right to file a lawsuit in court. A lawsuit is a case that contains a dispute or conflict between the parties that demand the termination and settlement of the court.¹³ According to Sudikno Mertokusumo, the lawsuit is a claim of rights, i.e. an action aimed at providing protection provided by the court to prevent vigilante acts (*eigenrichting*).¹⁴

In civil cases, those who take the initiative to file a claim are the aggrieved party. Therefore, the aggrieved party submits the case to the court to obtain a solution in the form of recovery, compensation, and termination of the adverse action. Civil cases concern disputes between individual interests or

⁹ Ade Saptomo, 2007, *Principles of Legal Research Methods*, Unnes Universitas Press, Surabaya, page 33.

¹⁰ Amiruddin dan Zainal Asikin, 2012, *Introduction to Legal Research Methods*, PT.Raja Grafindo Persada, Jakarta, page 25.

¹¹ Bambang Sunggono, 1997, *Legal Research Methods*, Raja Grafindo Persada, Jakarta, page 75

¹² Soejono Sukanto, 1984, *Introduction to Legal Research*, University of Indonesia, Jakarta, page 28

¹³ Cik Hasan Bisri, 1998, *Religious Courts in Indonesia*, PT Raja Grafindo Persada, Jakarta, page 229.

¹⁴ Sudikno Mertokusumo, *Indonesian Civil Procedure Code*, Yogyakarta: Liberty. 2002, page 52.

between the interests of a government body and individual interests. Civil cases can occur due to violations of one's rights as stipulated in civil law. Violation of one's rights can occur due to illegal acts (*onrechtmatige daad*) which cause harm to others.

Definition of the Court is contained in Article 1 number 1 of Law No. 49 of 2009 concerning General Judiciary, which states that the Court is the District Court and the High Court in the General Judicial environment. Courts are one place, body, or site that provides judicature. Judicature is everything related to the task of deciding a case by applying the law, finding the *in concreto* law in maintaining and guaranteeing the adherence to material law by using procedural means determined by formal law.¹⁵

Filing the claim, which is carried out by the plaintiff who feels his/ her rights have been harmed by the defendant, is obliged to prove what is being violated by the defendant. Obligation, from a person to prove that he/ she has a right to an event, is regulated in Book IV concerning Proof and Expiration. Chapter I is about proof in general. Article 1865 of the Civil Code states as follows: "Everyone who postulates that he/ she has rights, or, to affirm his/ her own rights or deny the rights of others, points to an event, is obliged to prove the existence of such rights or events."

Regarding to this, in the case mentioned in Chapter I of this writing, the Plaintiff ventured to submit his/ her lawsuit to the Court because they felt confident that they could prove that the plaintiff had an event whose rights had been harmed by the defendant. Therefore, in this case, the plaintiff has the authority to ask the District Court judge to cancel the deeds that have been made by the defendant before a public official.

Then, the object of the claim filed by the plaintiff is in the form of an unlawful act carried out by the defendant who has made, signed and issued Testament Deed No. 05 dated August 25, 2011 and Grant Act No. 18 dated September 19, 2011. The two deeds concerning granting a plot of land along with the building above were carried out by the Defendant unbeknownst to the Plaintiff. The authority of the plaintiff in submitting the cancellation of the deeds is because the donated object is a heritage of the plaintiff's deceased parents.

This can be seen from the statement of the heirs made by *Mamak* of the Head of the Jambak Tribe, which is known by the Head of Gunung Sarik Village, Kuranji Padang District, which contains: during the marriage between parents of the Plaintiff *in cassu* the parents of the defendant named Bagindo Nasrin (the late) and Jalisah, Ama.Pd (Defendant I), they have also been blessed with as many as 10 (ten) children that consist of:

1. JASRIN, male (Plaintiff 1).
2. NELY NASTI, female (Plaintiff 2).
3. EDLINASITA, female (Plaintiff 3).
4. NASWIRSYAH JEJENG, male (Plaintiff 4).
5. HAILINASRITA, female (Defendant).
6. RENI GUSLINA, female (Plaintiff 5).
7. GUSRINALDI, male (Plaintiff 6).
8. NOVELINA, female (Defendant III).
9. RINA NASRIN, female (Defendant II).
10. JONI ASRIN, male (Plaintiff 7).

During the marriage, Bagindo Nasrin (the late) and Jalisah, Ama.Pd (Defendant I) also obtained properties during the marriage in the form of a plot of land along with the building that was built on it, known as the Property Certificate No.925/ Gunung Sarik Village March 14, 1997, Number: 1363,

¹⁵ Sjachran Basah, 1995, *Judicatures in Indonesia*, Raja Grafindo Persada, Jakarta, page 9

covering an area of 163 M², written in the name of Jalisah (Defendant I) which in this case is a disputed object between the plaintiff and the defendant.

The acquisition of the object becomes a dispute because Jalisah (Defendant I) has inherited and granted the object of dispute by making a Testament Deed and Grant Deed to Rina Nasrin (Defendant II) without permission and unbeknownst to the plaintiff. Knowing this, the plaintiff as the legitimate heir of Bagindo Nasrin (the late) stated that the object of the dispute was inheritance for the heirs he left behind; i.e. as stated in the certificate of inheritance mentioned above which is none other than the plaintiff and the defendant.

The deeds made by Defendant I, are authentic deeds made by authorized general officials, before STK Notary, Bachelor of Law and Conveyancer in Padang City. Thus, the deeds can be used as perfect evidence and have binding strength between the two parties who have made the deed. A deed must be trusted about what is written in it and must be considered true as long as the untruth is not proven. Thus, in this case, the plaintiff considered that the Testament Deed Number 05 dated August 25, 2011 and the Grant Deed Number 18 dated September 19, 2011 were flawed and could be proven to be untruthful. Thus, they sued the defendant in which the content of the claim stating that the deeds were null and void. The matters or reasons for the plaintiff to cancel the Testament Deed and Grant Deed are described as follows.

2. *Basic Considerations of Judges of the Padang District Court in Deciding Cases*

The judge has the authority to cancel a notary deed as long as the plaintiff requests to do so and the plaintiff can prove the arguments that he/ she submitted so that it can strengthen the judge's confidence in the trial. If no party feels aggrieved and requests a notary deed to be canceled, the judge is not authorized to judge and decide that a notary deed can be canceled. In deciding a case relating to a request for cancellation of a notary deed, a judge or court essentially already has a reference or guideline; i.e. Law No. 2 of 2014 concerning Amendment to Law No. 30 of 2004 concerning Notary Position Regulations.

In the Articles of the Law, it is clearly stated in several Articles regarding what matters can make a notary deed have the power of private proof. The Notary/ Conveyancer deed is evidence that has the perfect proof power, if all the provisions of procedures or procedures for making a deed are fulfilled. If there is a procedure that is not fulfilled, and the procedure that is not fulfilled can be proven, then the deed with a court process can be stated as a deed that has the power of proof as private deed. If it happens that way, the proof value is submitted to the judge.

Based on the above description, to find out the resolution of the dispute over the cancellation of a testament and a deed, it can be clarified by the case of a dispute that was registered at the Registrar's Office of the Padang District Court Number: 131/PF.PDT/IV/2012 dated April 26, 2012 as follows:

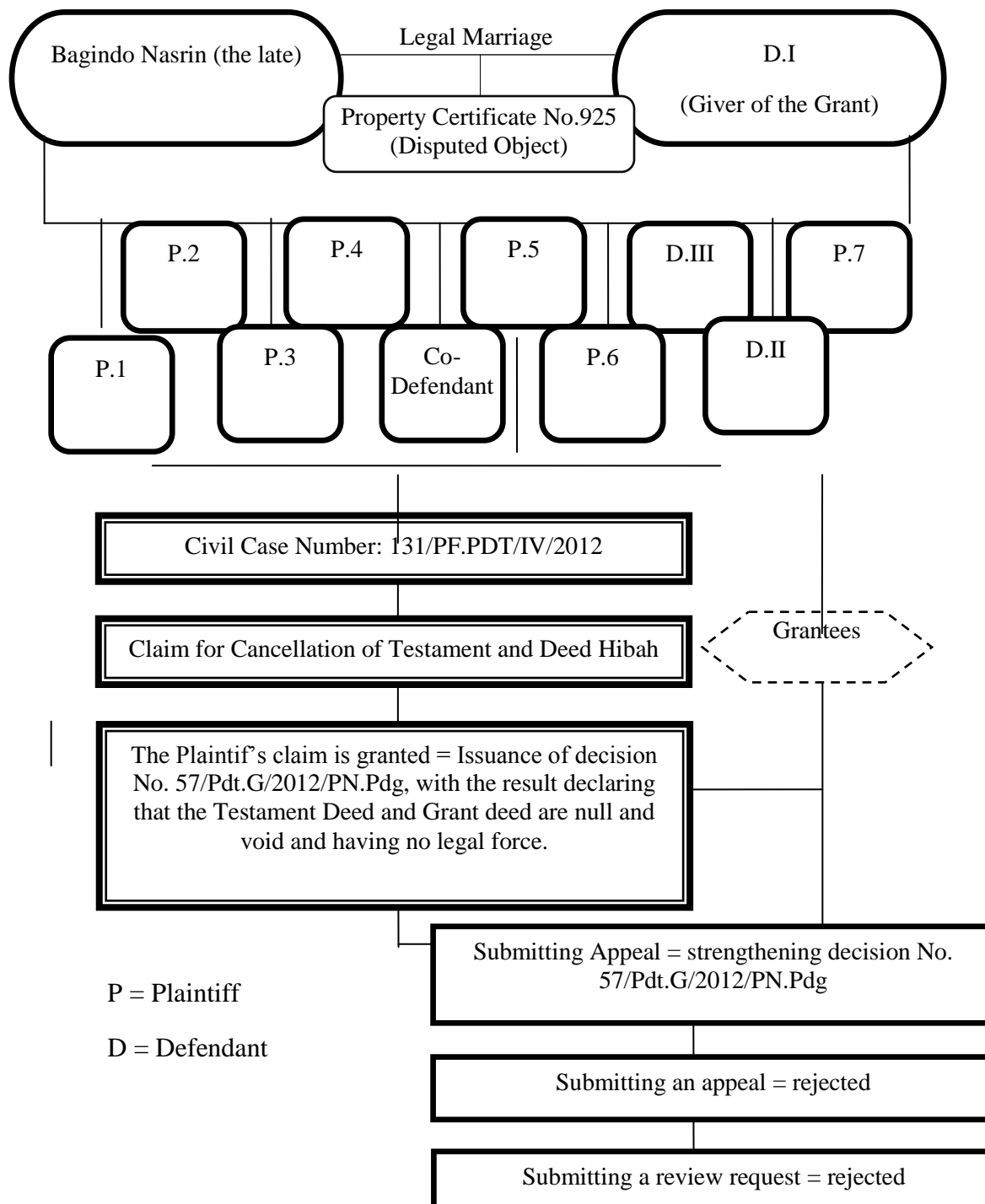
3. *Position Case*

The case concerning the issue of Notary/ Conveyancer deed which was declared null and void of legal force, contained in the decision Number: 57/Pdt.G/2012/PN.Pdg which was decided at the Padang District Court on December 19, 2012. This case occurred between:

- a. PLAINTIFF = Jasrin S. Sos, Nely Nasti, Edlinasita, Naswirsyah Jejeng, Reni Guslina, Gusrinaldi, Joni Asrin ST, all of which are biological siblings and biological children of the couple named Bagindo Nasrin (the late) and Jalisah Amd.Pd.
- b. DEFENDANT = Jalisah Amd. PD (defendant I), Rina Nasrin Spd. (defendant II), Novelina Spd. (defendant III), Notary/ Conveyancer Sartika S.H (defendant IV), Head of the Padang City Land Office (defendant V), Hailinasrita (co-defendant).

In general, the position of the parties in the case is detailed in the following scheme:

Position Scheme of The Parties
In Decision Number: 57/Pdt.G/2012/PN.Pdg



3. *Implementation of Decision Number: 57/Pdt.G/2012/Pn.Pdg Regarding Cancellation of Transition Object Disputes in National Land Agency of Padang City*

There are many land issues arising from land rights caused by community misunderstanding or unlawful actions that result in the possibility of legal defects and cause a problem that leads to a request for cancellation where the problem is brought to the trial process. Basically, before going to court, the National Land Agency, which is the organizer of government affairs in the land sector, always strives for land dispute resolution solutions based on applicable laws and regulations by paying attention to a sense of justice and respecting the rights and obligations of each party. The aim is to provide legal certainty and justice regarding the control, ownership, use and utilization of land.

Regulation of the Minister of Agrarian Affairs/ Head of the National Land Agency No. 4 of 2006 concerning the Organization and Work Procedure of the Regional Office of the National Land Agency and Land Office Article 3 letter b states that the Regional Office of the National Land Agency has a function in the assessment and handling of land disputes and conflicts. The dispute resolution steps, that the National Land Agency is taking, are by preparing material and handling legal, non-legal issues, disputes and conflicts, mediating and facilitating land dispute and conflict resolution, and handling cases in court as stated in Article 26 Regulation of the Head of the National Land Agency No. 4 of 2006.

In connection with the dispute over the cancellation of certificates of land rights, Article 1 No. 14 Regulation of the Minister of Agrarian Affairs/ Head of the National Land Agency No. 9 of 1999 concerning the Procedure for Granting and Cancellation of State Land Rights and Management Rights, states that the cancellation of land rights is the cancellation of the decision to grant land rights or certificates of land rights because the decision contains administrative legal defects in its issuance or to carry out court decisions that have obtained permanent legal force.

Decisions that have permanent legal force are decisions of the District Court received by both parties who are within the same case, a peace decision, a verdict that against them is not submitted verdict or appeal, a High Court decision that is received by both parties and not appealed, and a Supreme Court decision on the matter of appeal. In this case, there is no other way for the winning party than to use their right through the judge to carry out the decision. However, the decision must really be carried out and have obtained definite strength. It means that all legal ways to oppose that decision have been used or not used because of the time expiration; unless if it is stated that the decision can be carried out immediately despite opposition, appeals or cassation.

Based on the decision Number: 57/PDT.G/2012/PN.Pdg, the results of the decision are condemnatory; in other words, it is a judgment that contains punishments in which the losing party is punished for doing something. As stated in one of the decision points in the 10th (ten) point, it is declared null and void and has no legal force to transfer the rights to land and the building of the 925 Property Number/ Gunung Sarik Village Certificate. Therefore, in other words, it sentenced the defendants to return the certificate, authorizing the plaintiffs to reverse the name of the certificate, and punishing the National Land Agency of Padang City for submitting to the results of the decision.

By the cancellation decision that has permanent legal force and issued by the competent court, the National Land Agency must implement the contents of the decision as stipulated in Article 58 paragraph (1) Minister of Agrarian and Spatial Regulation/ Head of National Land Agency No. 11 of 2016 concerning Land Case Settlement; i.e., the implementation of a court decision that has legal force must still be implemented unless there is a valid reason for not carrying it out.

The implementation of a decision (the decision of the first level court and the decision of the Supreme Court) is known as "execution". Execution, as a legal action carried out by the court to the party who loses in a case, is a rule and is a procedure for proceeding with the proceedings. Therefore, execution is a continuous act of the entire legal procedure. Execution is a unit that is not separate from the implementation of procedural rules contained in *Herzien Inlandsch Reglement (HIR)* or (*Rechtreglement voor de Buitengewesten*) RBG.

Understanding of execution according to M. Yahya Harahap is a legal action carried out by a court to the party who loses in a case and is a rule of procedure continued from the process of continuous

examination of the entire legal procedure.¹⁶ The execution is divided into 2 (two) types: first is voluntary execution which means that the defeated party carries out its own court decision without any coercion from the other party. Second, execution by coercion which means that carrying out a court decision and is a legal action carried out forcibly against the losing party because they do not want to carry out the decision voluntarily. In addition, the matters that become the legal basis for implementing execution are as follows:

1. Law No. 48 of 2009 concerning the Principles of Judicial Power, Article 54 paragraph (3), which is about legal obligations based on moral norms in which the implementation of court decisions must strive to maintain humanity and justice.
2. Article 54 paragraph (2) Law No. 48 of 2009 concerning Judicial Power which states that executors of court decisions in civil cases are clerks and bailiffs headed by the Chair of the Court.
3. The implementation of the Religious Courts decision is regulated in Stb. 1982 No. 152 Article 2 paragraph (5) which states: after that, the decision can be carried out according to the usual rules concerning carrying out the decisions of the General Court in this case and Stb. 1937 No. 63-639, Article 3 paragraph (5) paragraph 3 which states: after that, the decision can be carried out according to the rules of carrying out the Civil Court District decision.
4. Supreme Court Regulation No. 1 of 1980 which is completed by Article 5 stating that the petition for Judicial Review does not suspend or stop the execution.
5. Circular Letter of Supreme Court No. 4 of 1975 which states that hostage taking is aimed at people who are no longer able to pay off their debts and if someone is held hostage, he/ she loses freedom of movement, he/ she no longer has the opportunity to try to get money or goods to pay off his/ her debt.

To execute, it is necessary to pay attention to various principles as follows:¹⁷

1. The judge's decision that will be executed must have a permanent legal force (*in kracht van gewijsde*). In other words, in the judge's decision, there is a definite legal relationship between the parties that must be obeyed/ fulfilled by the defendant, and there is no legal remedies (*rachtsmiddel*).
2. The judge's decision that will be executed must be punitive (*condemnatoir*). In other words, the punitive decision is realized from the existence of cases in the form of jurisdictional content (not jurisdictional voluntary). The characteristic is that the case is a dispute (in the form of a party) where there is plaintiff and defendant and the examination process is the opposite between the plaintiff and the defendant (*contradictoir*).
3. The judge's decision is not carried out voluntarily. In other words, the defendant as the losing party in the case is obviously not willing to carry out the decision voluntarily. Conversely, if the defendant is willing to carry out the decision voluntarily, the execution is automatically no longer needed.
4. The authority for execution only exists at the first level court [Article 195 Paragraph (1) HIR/ Article 206 Paragraph (1) HIR R.Bg]. In other words, the appeal court with the Supreme Court does not have the authority to do so, including the decision itself. Therefore, in *ex officio*

¹⁶ M. Yahya Harahap, 1991, *Scope of the Execution Issues in the Civil Sector*, Gramedia, Jakarta, page 1

¹⁷ M. Luqmanul Hakim Bastary, *Execution of Civil Case Decisions*, accessed from: [http://www.pta-bandung.go.id/uploads/arsip/1491 Eksekusi Perkara Perdata.pdf](http://www.pta-bandung.go.id/uploads/arsip/1491%20Eksekusi%20Perkara%20Perdata.pdf) on Saturday, May 11, 2019, at 10:30 West Indonesia Time

(*ambtshalve*), the authority is in the head of the first court (religious court/ district court) concerned from beginning to end.

5. Execution must be in accordance with the decision. In other words, what is predicted by the decision is what will be executed. Thus, it must not deviate from the decision. Therefore, the success of the execution is determined by the clarity of the decision itself based on legal considerations as the judge's argument.

Mr. Khairul Findra, as Head of the Disputed Section of the National Land Agency of the City of Padang, said that the implementation of decision Number: 57/PDT.G/2012/PN.Pdg regarding the cancellation of the transfer of the certificate of ownership had not been processed by the plaintiff as the party win in the case. Although in the decision stated that the National Land Agency as the defendant must submit and obey the decision, however, the initiative to cancel land rights must be carried out by interested parties.¹⁸ This is because the National Land Agency is a government agency whose duty is only to record what is requested by interested parties. Without activeness from parties who want to make or cancel a land right, then the National Land Agency will not make or change anything without the application letter.

There is a procedure that must be carried out by the plaintiff to cancel the certificate of land rights at the National Land Agency. The step that must be taken is that the plaintiff must submit a request letter along with the verdict of the District Court that has been legalized and the decision has been denied or has permanent legal force.¹⁹ As stipulated in Article 50 paragraph (1) of Ministerial Regulation No. 11 of 2016 concerning Land Case Settlement, court decisions that have permanent legal force relating to issuance, transfer, cancellation of land rights and/ or cancellation of abandoned land, are carried out based on petition from interested parties through the local Land Office.

After the letter of application, the National Land Agency will issue a certificate previously in the name of Rina Nasrin (Defendant II) then crossed out and canceled and then reissued certificate in the name of Jalisah (Defendant I). However, if Defendant I has died or passed away, the certificate will be made in the name of the legal heir of Defendant I as evidenced by the Defendant I's Death Deed issued by the Civil Registry and the Heir's Certificate known to the Head of Village.

The role of the National Land Agency in implementing a court decision is very important in order to guarantee legal certainty and defend the interests of holders or owners of the land rights. Referring to the theory of legal certainty, the law is implemented in accordance with the legal substance agreed upon by the community where the law applies. This is related to law enforcement, i.e. the process of realizing legal wishes into reality. If it is associated with ownership of land certificates, this legal certainty aims to avoid disputes against other parties and legal certainty can provide protection to people whose names are listed in certificates of disruption to other parties who feel more entitled.²⁰ Therefore, legal certainty is needed to ensure peace and order among the community.

Conclusion

Based on the description, the following conclusions can be drawn:

1. Regarding the cancellation of a testament and a deed made before Notary/ Conveyancer, the cancellation process must use a court decision. The panel of judges which decided the cancellation of the two deeds was based on the reason that the defendant in submitting and granting the land and the buildings above had violated the law which resulted in the plaintiff's

¹⁸ Results of Interview with Mr. Khairul Findra, Head of the Disputed Section of the National Land Agency of Padang City on Wednesday, January 23, 2019, at 09.00 West Indonesia Time.

¹⁹ *Ibid*,

²⁰ Peter Mahmud Marzuki, 2005, *Legal Research*, First Edition, Second Print, Kencana Prenada Media Group, Jakarta, page 59-60

loss as a legal heir. The loss is based on the transfer of the object of the dispute violating the absolute part or *legitime portie* of the heirs as stipulated in Article 913 of the Civil Code.

2. Regarding legal consequences arising from the transfer of grants in the form of land and buildings that are requested for cancellation at the District Court with a decision that has permanent legal force, ownership of the land and buildings will return to the grantor; so that all grant objects are returned and become their own rights. If the object of the grant has been going through title transfer or has been certified on behalf of the recipient of the grant, the certificate is declared invalid. The grant giver can submit a request to the National Land Agency so that the disputed object certificate is no longer valid by attaching a legalized cancellation decision and the decision that has been agreed. Then the certificate of the object of dispute can be returned on behalf of the grantor.

Suggestion

Based on the above conclusion, the author will provide the following suggestion:

1. Authentic Deed has a complete and perfect proof power which is one of the products of Notary/ Conveyancer. Therefore, to maintain its authenticity, a Notary/ Conveyancer, who has been given the task and authority by the Law in carrying out their duties and position, should be guided by existing rules, i.e. the rules stipulated in the Law on Notary Position, Regulations on Conveyancer Position, the established code of ethics, and upholding the dignity of the oath and organization of the Notary.
2. To avoid loss by other parties to their product deeds, in addition to Notaries and Conveyancers, the community should be more careful and vigilant in carrying out legal actions. The community must know whether or not what they are going to do is true. The most important thing is that it must be accompanied by evidence and good intentions so that the position of the deed made becomes clear and does not cause disputes in the future. Thus, the strength of authentic deed remains complete and perfect evidence in the trial.
3. The National Land Agency in Indonesia will always face increasingly complex land issues. To avoid the frequent cancellation of certificate of land rights, it must carry out more in-depth research on the publishing process regarding juridical and physical data by using advanced technology, tightening document checks, streamlining the announcement institutions and witness institutions, and routinely implementing legal counseling.

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